IN THE SUPREME COURT
OF THE UNITED STATES

October Term 1971

No. 71-1570

OLD KENT BANK & TRUST COMPANY,

Original Interpleader Plaintiff,

vs.

DEWITT T. HOBBS, JR.,

Petitioner,

vs.

CUSTOM FINANCE COMPANY,
MAGNOLIA HOMES MANUFACTURING CORPORATION
and
GUERDON INDUSTRIES, INC.,

Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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This Brief in Opposition to the Petition for a Writ of Certiorari is filed in behalf of Custom Finance Company, Magnolia Homes Manufacturing Corporation of Vicksburg, Mississippi, and Guerdon Industries, Inc., Respondents. In the interest of clarity, reference will be made to the Respondents as "Custom," "Magnolia" and "Guerdon". Petitioner will be referred to as

"Hobbs".

STATUTORY PROVISIONS INVOLVED

Petitioner Hobbs fails to set forth all the statutory provisions involved in this case. They are quoted in pertinent part in Appendix A and are stated as follows:

§8.3-118(e), Code of Virginia (1950), as amended, 2A Code of Virginia 165.

§8.3-119, Code of Virginia (1950), as amended, 2A Code of Virginia 166.

§8.3-307, Code of Virginia (1950), as amended, 2A Code of Virginia 193.

§8.3-402, Code of Virginia (1950), as amended, 2A Code of Virginia 197.

§8.3-413 (1), Code of Virginia (1950), as amended, 2A Code of Virginia 211.

§8.3-601, Code of Virginia (1950), as amended, 2A Code of Virginia 235.

§8.3-606, Code of Virginia (1950), as amended, 2A Code of Virginia 242.

§8.9-207, Code of Virginia (1950), as amended, 2A Code of Virginia 438.

§70 a and §70 a (6) Bankruptcy Act, 11 U.S.C.A. §110 a and §110 a (6).

Rule 8 (c), 28 U.S.C.A. Federal Rules of Civil Procedure.

Rule 52 (a), 28 U.S.C.A. Federal Rules of Civil Procedure.

Rule 56 (e), 28 U.S.C.A. Federal Rules of Civil Procedure.

Rule 4 (a), 28 U.S.C.A. Federal Rules of Appellate Procedure.

Rule 19.1, 28 U.S.C.A. Supreme Court Rules

Rule 40.5, 28 U.S.C.A. Supreme Court Rules

QUESTIONS PRESENTED FOR REVIEW

Respondents Custom, Magnolia and Guerdon disagree with Petitioner Hobbs' statement of the questions presented for review. As expressed in the opinion of the Court of Appeals (set forth at pages 15a, 16a of the Appendix to the Petition)

"The only two questions raised on appeal are:

(1) Whether Hobbs was discharged from liability on the notes because of Custom's breach of agreement and

(2) Whether Hobbs proved his entitlement to damages for breach of the agreement."

STATEMENT OF THE CASE

Respondents Custom, Magnolia and Guerdon disagree with Petitioner's statement of the case. Instead, for the sake of accuracy and brevity, Respondents adopt the concise statement of the case discerned by the Court of Appeals from its review of the record and the facts found by the District Court as follows:

> "In an interpleader action, the defendants filed cross-claims against one another. DeWitt T. Hobbs, Jr. (Petitioner) sought a declaration that he was discharged from

liability on two notes, in the aggregate amount of $300,000.00, payable to Custom Finance Company because of payment in full, or, in the alternative, because of Custom's breach of agreement between him, Custom, Magnolia Homes Manufacturing Corporation and Guerdon Industries, Inc.; and he sought damages from Custom, Magnolia and Guerdon (Respondents). The agreement had been entered into after Hobbs' enterprise, Eastern Trailer Sales, Incorporated, and its subsidiaries, were recognized to be in severe financial difficulty and it was made in an effort to save them. New loans of $300,000.00 were made to Eastern and Hobbs, evidenced by the two notes and a third note evidencing existing indebtedness of $499,841.43 was also given. The new loans and the existing indebtedness were secured and the lenders made certain agreements as to how they would deal with the collateral. Custom cross-claimed against Hobbs for the unpaid balance of those notes and the third note. The District Court entered judgment against Hobbs for the unpaid balance of the notes and dismissed Hobbs' cross-claim for damages for lack of proof. Hobbs has appealed."

The judgments of the District Court were affirmed by the Court of Appeals. Petitioner now seeks certiorari.

For the convenience of this Court, the District Court's opinion announced from the bench at the conclusion of the trial, but

omitted from the Petition, is annexed hereto as Appendix B.

REASONS FOR DENYING WRIT

Respondents Custom, Magnolia and Guerdon respectfully submit that the writ should be denied because:

1. The Court of Appeals has not so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the District Court as to call for an exercise of this Court's power of supervision.

a. The "clean hands" maxim may not be invoked against a litigant who seeks, not the relief which is accorded by an equity court, but the enforcement of a legal right. Manufacturer's Finance Co. v. McKey, 294 U.S. 442, 79 L.Ed. 982, 55 S.Ct. 444 (1935). It may be noteworthy in this regard that Petitioner relies upon dissenting opinions.

b. Even if the "clean hands" maxim were considered to be applicable to all civil actions, Petitioner's allegation of "unclean hands" is nothing more than his pleaded breach of contract defense which the District Court found and the Court of Appeals agreed was unproved and unsupportable.

(1) As the District Court stated in response to the same argument made there on Hobbs' Rule 60(b) Motion for Relief from Judgment, Record Vol. VIII, p.12,

> "I say this directly in front of Mr. Hobbs, that I have heard all of this. I have heard all the allegations. I have heard an acknowledgment that at

the time the May 12th agreement, or the note in April was made, there was an acknowledgment that there was $498,000, or whatever it was, due for trailers that had been delivered but not paid for. This is the background to the $498,000. I have heard there has been an accounting by both sides by the accountant that went into the thing and audited the figures given to them by the Hobbs' corporation, and that there was a $2,000 or $3,000 variance, as I recall, but rather than argue, *** they accepted the lower figure.

As I remember the evidence, the original figure was provided by Hobbs."

(2) This case was pending nearly two and a half (2 1/2) years before the two day trial. The entry of the second final judgment was delayed more than 60 days thereafter to enable Petitioner to come up with evidence to support his persistent allegations of wrongdoing, which he was unable to do, (See Memorandum Opinion of District Court, Appendix to Petition, p.3a et. seq.) even though he has had full access to all the records of his corporations, which have remained in the custody of the District Court since December 7, 1966. (Record, Vol. II, p. 438)

(3) The Court of Appeals found that "the proof to show the unpaid balances on the three notes in the amounts for which judgment was entered was sufficient." (Appendix to Petition, p.16a) The credibility of witnesses is for the trier of fact. Certiorari is not to be granted to review evidence nor to discuss specific facts. Rogers v. Missouri Pacific RR, 352 U.S. 500, 537, 77 S.Ct. 459, 1 L.Ed. 2d 515, 527 (1957); United States v. Johnston, 268 U.S.

220, 227, 69 L.Ed. 925, 926, 45 S.Ct. 496 (1925). See also Houston Oil Co. & Goodrich, 245 U.S. 440, 62 L.Ed. 385, 38 S.Ct. 140 (1918); Southern Power Co. v. North Carolina Public Service Co., 263 U.S. 508, 68 L.Ed. 413, 44 S.Ct. 164 (1924); General Talking Pictures Corp. v. Western Electric Co., 304 U.S. 175, 178, 82 L.Ed. 1273, 1275, 58 S.Ct. 849 (1937).

2. The Court of Appeals has not decided an important question of federal law which has not been but should be settled by this Court.

a. The Court of Appeals after reviewing the evidence in the record and applying the law of Virginia agreed with the findings of the District Court that Petitioner Hobbs was a maker not a surety. It is obvious that the Court of Appeals did apply State negotiable instruments law but did not decide a question of federal law. A fortiori, the Court of Appeals did not decide an important question of federal law. Moreover, this is not a case or controversy arising under the Constitution, Treaties or Statutes of the United States and, therefore, does not present a federal question. See 28 U.S.C.A. §1331. It is an interpleader action based on diversity of citizenship. See 28 U.S.C.A. §1335.

b. Certiorari is not granted in a case such as this which has no importance to the public as distinguished from the parties. N.L.R.B. v. Pittsburgh Steamship Company, 340 U.S. 498, 95 L.Ed. 479, 71 S.Ct. 453 (1951).

c. Certiorari is not granted in a case such as this which has no importance to the operation of the federal system. Importance of the outcome to the parties is not enough. Rogers v. Missouri Pacific Railroad, 352 U.S. 500, 529, 1 L.Ed. 2d 515, 529, 77 S.Ct. 459 (1957).

3. Certiorari will not be granted to review a final order of the District Court which was not appealed to the Court of Appeals.

To the extent that Hobbs' Petition challenges the order of the District Court (set forth in Appendix C annexed hereto) denying Petitioner Hobbs' Rule 60(b) F.R.C.P. Motion for Relief from Judgment, this Court lacks jurisdiction to entertain it, since such was a final order of the District Court from which no appeal was taken. Ackerman v. United States, 340 U.S. 193, 95 L.Ed. 207, 71 S.Ct. 209 (1950); Rule 4, n. 11, 28 U.S.C.A. Federal Rules of Appellate Procedure; Cromelin v. Markwalter, 181 F.2d 948, 949 (5th Cir, 1950); Greenspahn v. Joseph E. Seagram & Sons, 186 F.2d 616, 618 (2nd Cir, 1951); In the Matter of Marachowsky Stores Co., 188 F.2d 686, 689 (7th Cir, 1951), cert. den. (1951) 342 U.S. 822, 72 S.Ct. 41, 96 L.Ed. 622; Gunther v. E. I. DuPont DeNemours & Co., 255 F.2d 710 (4th Cir, 1958).

4. Finally, Hobbs' Petition contains burdensome, irrelevant, immaterial and scandalous matter, and should be disregarded and stricken by the Court pursuant to Rule 40.5, Rules of the Supreme Court.

a. At the risk of oversimplification, the crux of the controversy between Magnolia and Midland Guardian Company which erupted into Civil Action 5873 after their business dealings terminated concerned Magnolia's liability to Midland under a mobile home repurchase agreement, Magnolia's liability to Midland for one-half Midland's Eastern floorplan losses, Magnolia's liability to Midland for one-half the advances Midland made to Eastern Trailer Sales, Inc., Magnolia's liability to Midland for one-half Midland's loss on retail financing due to the Internal Revenue Service attaching Eastern's

bank account (the so called "out of trust" loss which Hobbs relies on in his petition), Magnolia's liability to share Eastern reserve accounts recoveries equally with Midland. The additional dispute therein, concerning alleged invoicing practices and methods of releasing certificates of origin, involved matters antedating and unrelated to the three notes upon which judgment was entered. (Record Vol. II, pp. 320 et. seq., 458 et. seq.) All matters in controversy therein were resolved by dismissal order entered November 4, 1970 (Record Vol. II, p. 789) pursuant to the settlement agreement between Magnolia and Midland. (Exhibit X-1) None of the record in that action is pertinent here.

b. The allusion made by Hobbs at page 19 of his Petition that the District Court and the Court of Appeals have somehow been influenced by "power, prestige and money" deserves the sternest censure in the only meaningful way: denial of his Petition.

CONCLUSION

For the foregoing reasons, Respondents Custom, Magnolia and Guerdon respectfully submit that Hobbs' Petition for a Writ of Certiorari should be denied.

Respectfully submitted,
CUSTOM FINANCE COMPANY,
MAGNOLIA HOMES MANUFACTURING CORPORATION
and
GUERDON INDUSTRIES, INC.
By: BREEDEN, HOWARD & MACMILLAN
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Norfolk, Virginia 23510

Robert R. MacMillan, Of Counsel
E. Leslie Cox, Of Counsel

This is to certify that the foregoing Brief in Opposition to the Petition for a Writ of Certiorari was served by depositing three copies in a United States mail box, with first class postage prepaid, addressed to Charles R. Cloud, Counsel of record for the Petition, at 210 Atlantic National Bank Building, Norfolk, Virginia, 23510, this 22nd day of June, 1972.

E. Leslie Cox
Attorney

APPENDIX A

§8.3-118 (e), Code of Virginia (1950), as amended, 2A Code of Virginia 165

"(e) Unless the instrument otherwise specifies two or more persons who sign as maker, acceptor or drawer or indorser and as a part of the same transaction are jointly and severally liable even though the instrument contains such words as 'I promise to pay."

§8.3-119, Code of Virginia (1950), as amended, 2A Code of Virginia 166

"(1) As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by any other written agreement executed as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.

(2) A separate agreement does not effect the negotiability of an instrument. (1964, c.219.)"

§8.3-307, Code of Virginia (1950), as amended, 2A Code of Virginia 193

"(1) Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue

(a) the burden of establishing it is on the party claiming under the

signature; but

(b) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

(2) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

(3) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course. (Code 1950, §6-411; 1964, c.219.)"

§8.3-402, Code of Virginia (1950), as amended, 2A Code of Virginia 197.

"Unless the instrument clearly indicates that a signature is made in some other capacity it is an indorsement. (Code 1950, §§6-369, 6-415; 1964, c.219)"

§8.3-413 (1), Code of Virginia (1950), as amended, 2A Code of Virginia 211.

"(1) The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement or as completed pursuant to §8.3-115 on incomplete instruments."

§8.3-601, Code of Virginia (1950), as amended, 2A Code of Virginia 235.

"(1) The extent of the discharge of

any party from liability on an instrument is governed by the sections on

(a) payment or satisfaction (§8.3-603); or

(b) tender of payment (§8.3-604); or

(c) Cancellation or renunciation (§8.3-605); or

(d) impairment of right of recourse or of collateral (§8.3-606); or

(e) reacquisition of the instrument by a prior party (§8.3-208); or

(f) fraudulent and material alteration (§8.3-407); or

(g) certification of a check (§8.3-411); or

(h) acceptance varying a draft (§8.3-412); or

(i) unexcused delay in presentment or notice of dishonor or protest (§8.3-502).

(2) Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.

(3) The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument

(a) reacquires the instrument in his own right; or

(b) is discharged under any provision of this title, except as otherwise provided with respect to discharge for impairment of recourse or of collateral (§8.3-606). (Code 1950, §§6-472 to 6-474; 1964, c.219)."

§8.3-606, Code of Virginia (1950), as amended, 2A Code of Virginia 242.

"(1) The holder discharges any party to the instrument to the extent that without such party's consent the holder

(a) without express reservation of rights releases or agrees not to sue any person against whom the party has to the knowledge of the holder a right of recourse or agrees to suspend the right to enforce against such person the instrument or collateral or otherwise discharges such person, except that failure or delay in effecting any required presentment, protest or notice of dishonor with respect to any such person does not discharge any party as to whom presentment, protest or notice of dishonor is effective or unnecessary; or

(b) unjustifiably impairs any collateral for the instrument given by or on behalf of the party or any person against whom he has a right of recourse.

(2) By express reservation of rights against a party with a right of recourse the holder preserves

(a) all his rights against such party as of the time when the instrument was originally due; and

(b) the right of the party to pay the instrument as of that time; and

(c) all rights of such party to recourse against others. (Code 1950, §6-473; 1964, c.219.)"

§8.9-207, Code of Virginia (1950), as amended, 2A Code of Virginia 438.

"(1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession

(a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) the secured party may hold as additional security any increase or profits (except money) received from the

collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement. (1964, c.219.)"

§70 a and §70 a (6) Bankruptcy Act, 11 U.S.C.A. §110 a and §110 a (6).

"(a) The trustee of the estate of a bankrupt and his successor or successors, if any, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt as of the date of the filing of the petition initiating a proceeding under this Act, except insofar as it is to property which is held to be exempt, to all of the following kinds of property wherever located

(6) rights of action arising upon contracts, or usury, or the unlawful taking or detention of or injury to his property;"

Rule 8 (c), 28 U.S.C.A. Federal Rules of Civil Procedure, provides:

"(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively***any***matter constituting an *** affirmative defense."

Rule 52 (a), 28 U.S.C.A. Federal Rules of Civil Procedure, provides in pertinent part:

"Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witness."

Rule 56 (e), 28 U.S.C.A. Federal Rules of Civil Procedure, provides in part:

"When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon mere allegations or denials of his pleadings, but his response by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

Rule 4 (a), 28 U.S.C.A. Federal Rules of Appellate Procedure.

"(a) In a civil case (including a civil action which involves an admiralty or maritime claim and a proceeding in

bankruptcy or a controversy arising therein) in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by Rule 3 shall be filed with the clerk of the district court within 30 days of the date of the entry of the judgment or order appealed from;***"

Rule 19.1, 28 U.S.C.A. Supreme Court Rules

"(1) A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

(b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or teritorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned

such a departure by a lower court, as to call for an exercise of this court's power of supervision."

Rule 40.5, 28 U.S.C.A. Supreme Court Rules

"(5) Briefs must be compact, logically arranged with proper headings, concise, and free from burdensome, irrelevant, immaterial, and scandalous matter. Briefs not complying with this paragraph may be disregarded and stricken by the court."

APPENDIX B

January 5, 1971
MEMORANDUM OPINION

THE COURT: Mr. Ball, I see no reason to hold this matter in suspense.

In short, Mr. Hobbs has said that he, himself, considered the Eastern Trailer Sales, Inc. to be the owner of this specific reserve of the Old Kent State Bank, and that his claim, he said, if any, arose out of the fact that he retained, in some fashion, an interest in it as a pledge for $160,000 that was owed to him by the new company. But to support that claim, there has been no assignment shown of this Old Kent State Bank reserve to Mr. Hobbs; there have been no corporate minutes which indicate that it had pledged as collateral for a note payment, this Old Kent State Bank reserve.

In short, it seems to me that Mr. Hobbs changed his position in mid-stream of trial from a claim of out and out ownership of the reserve to an abstract ownership by virtue of some pledge which I find specifically he has not proved by any shred of evidence.

In my trial notes, I particularly underlined Mr. Hobbs statement to me, that all of the reserves, including the Old Kent Reserve, were owned by Eastern Trailer Sales, Inc., that they were transferred to it by Mr. Hobbs and that his claim is that he retained the reserves as collateral for $160,000 note due from the corporation.

Not only is there no evidence that there was any such outright action on his part to claim this particular reserve as any collateral for a debt, but in every ostensible showing of

the assets of Eastern Trailer Sales, Inc., of which Mr. Hobbs was the chief entrepreneur and sole owner, in every statement issued by them from the date of their incorporation, and from then on, this particular reserve was listed by a competent certified public accountant, employed by Hobbs, as an asset of the corporation.

As far as I am concerned, there is absolutely no proof of anything except that Eastern Trailer Sales, Inc., owned this reserve; that by its agreement of May 12, 1966 it contracted to offer this as collateral for loans made by the Custom Finance Corporation; and there is no question but three days later this was memorialized in a written, proper assignment which states on its face the assigning of that reserve. The evidence, in other words, is overwhelming.

As to the cross-claim of Mr. Hobbs, it is, in my judgment, frivolous. There isn't any evidence at all before this Court to support any of the statements that he blatantly asserts as to damages due to him.

There is no effort to separate his cross-claim, if any he has, as between the many defendants that are in this suit. He states that all reserves, unless they have been otherwise applied, would belong to him because he was the sole stockholder of Eastern Trailer Sales, Inc.

On two accounts his cross-claim would fail. First and foremost, because this record is totally devoid of any evidence to sustain it. And in the second place, if there were any claim, and I doubt that there is any, he has no title to it nor right to assert it in this Court.

The Court reserves the right after reading this statement to make such changes in it as would be necessary to make a more formal

findings of fact and conclusions of law. I do announce that in my judgment this reserve belonged to Eastern Trailer Sales, and it was pledged to the defendants in this case, and that it properly belongs to the Gerden Industries, Inc., as successors in whole to Custom Finance Co. and Magnolia Homes Manufacturing Co.

On the second count, the cross-claim of Mr. Hobbs is dismissed.

Now, Mr. MacMillan, if you will present to me a judgment order in accord with this statement, presenting it first to Mr. Ball for his notation and exception, then we will move on from there. No judgment will be entered, Mr. Clerk, until I have entered a formal Judgment Order.

MR. MacMILLAN: Has the Court ruled on the note yet, Your Honor?

THE COURT: What about the notes?

MR. MacMILLAN: There were two claims for the notes and remember, I am not asking for the $490,000.

THE COURT: In addition, Gerden Industries would be entitled to judgments against Mr. Hobbs as co-signer of a note dated May 12, 1966 in the original amount of $200,000 and a note dated May 1966 in the fact amount of $100,000. The total balance on it is now testified is $119,760.68. And if the note provides for 18 per cent attorney's fees, I would allow that.

Is the total amount due on both of those notes? I believe that is correct.

MR. MacMILLAN: That is correct.

THE COURT: All right, sir. If you want

me to break it down, Mr. Ball, in the judgment, I will be glad to do it. If you think there is some sufficient difference between the two notes to warrant that. In any event, Mr. MacMillan, bring to me a breakdown of the two notes, separate and apart, so if there is any question as to whether judgment should be rendered separately on them I will have the figures available for that purpose.

MR. BALL: One other thing, in light of the Court's ruling. If Your Honor please, as to the Old Kent reserve, we submit to the Court that would be a credit against the unpaid balance on the note.

MR. MacMILLAN: We readily agree with that, Your Honor. We don't claim that is not an asset to be applied.

THE COURT: All right, sir. You will take that into account in any judgment order presented to you.

MR. BALL: And the Court is not counting-

THE COURT: No, sir. Your appeal period will not run. It would be manifestly unfair for me to charge to you your appeal time when what I have said is simply an oral recitation. Your exceptions and assignments of error may not now be known to you. Your appeal time will not begin to run until I enter the formal judgment order.

MR. BALL: We thank the Court, Your Honor.

Record, Vol. I
p. 255a-e

Appendix B

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

OLD KENT BANK & TRUST COMPANY,	:	
	:	
Plaintiff	:	
	:	CIVIL ACTION
v.	:	No. 464-70-N
	:	
DeWITT T. HOBBS, JR., et al.,	:	
	:	
Defendants	:	

ORDER DENYING MOTION PURSUANT TO RULE 60
OF THE FEDERAL RULES OF CIVIL PROCEDURE

This day came the parties on the Motion and Affidavit of DeWitt T. Hobbs, Jr., pursuant to Rule 60 of the Federal Rules of Civil Procedure, seeking Relief from the Final Judgment Entered on February 2, 1971; on the Response of Guerdon Industries, Inc., et al and the Affidavit of E. Leslie Cox; on the arguments of counsel heard on March 2, 1971; and on the Court's Memorandum Opinion dated March 5, 1971; and,

It appearing to the Court that the Motion of DeWitt T. Hobbs, Jr. pursuant to Rule 60 should be denied for the reasons stated in the Court's Memorandum Opinion, it is hereby ORDERED that the Motion be, and it hereby is, denied; to which action of the Court DeWitt T. Hobbs, Jr. duly excepts.

/s/ John A. MacKenzie
District Judge

In Norfolk, Virginia
March 11, 1971

We ask for this:

/s/ Robert R. MacMillan
Of counsel for Guerdon Industries, Inc., et al

/s/ Jay Ball
Of counsel for DeWitt T. Hobbs, Jr.

Record, Vol. I, p. 306

Appendix C